

ADELPHIA RECOVERY TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 05 Civ. 9050 (LMM)
	)	
BANK OF AMERICA, N.A., et al.,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York and Rule 56 of the Federal Rules of Civil Procedure, the defendant Investment Banks<sup>1</sup> state the following material facts as to which there is no genuine issue to be tried:<sup>2</sup>

- <sup>1</sup> All capitalized terms not defined herein have the same meaning as in the accompanying Memorandum of Law in Support of the Investment Banks' Motion for Summary Judgment.

<sup>2</sup> Referenced exhibits are attached to the Declaration of Nora K. Abularach, dated November 18, 2009.

7/29/09 Tr. at 105:12-17, 261:6-15); Ex. 10 (Metros 7/30/09 Tr. at 732:6-15); Ex. 11 (Mulcahey 5/6/09 Tr. at 100:11-12, 105:16-20); Ex. 12 (Mulcahey 5/7/09 Tr. at 535:19-536:22); Ex. 13 (Kailbourne 10/1/09 Tr. at 549:3-13); Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART fails to identify any statements made or documents provided to the Outside Directors by the Investment Banks).

4. There is no evidence of any written or oral agreement between the Investment Banks and Adelphia imposing a fiduciary or similar duty on the Investment Banks. Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART offers only conclusory allegations and fails to identify any written or oral agreement between the Investment Banks and Adelphia imposing a fiduciary or similar duty on the Investment Banks).
5. There is no evidence that the Investment Banks either accepted or understood that they were entering into a fiduciary relationship with Adelphia. Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART offers only conclusory allegations and fails to identify any specific facts supporting its contention that the various Investment Banks owed and breached a legal duty (fiduciary or otherwise) to Adelphia).
6. The Rigases were in possession of all information the ART alleges was concealed from the Outside Directors. Ex. 35 (SAC ¶¶ 805, 1007); Ex. 3 (Michael Rigas 7/22/09 Tr. at 673:5-12).

Dated: New York, New York  
November 18, 2009

Respectfully submitted,

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